Docket No.: 03-8012
(PATENT)

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
James H. Drew et al.

Application No.: 10/699,141          Confirmation No.: 3441

Filed: October 31, 2003          Art Unit: 3623

For:  PERSONNEL PRODUCTIVITY INDICES      Examiner: J. G. Sterrett

## RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
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The following is in response to the Notice of Non-Compliant Appeal Brief dated January 26, 2010. The Notice rejected the Appeal Brief filed October 28, 2009 because the "Summary of Claimed Subject Matter" section included an introduction and dependent claims. During a telephone conference with the Examiner on January 28, 2010, the Examiner indicated that the entire appeal brief was not required, but only a revised copy of the "Summary of Claimed Subject Matter" section. Further, Appellants and the Examiner discussed the requirements of 37 C.F.R. 41.37(c)(1)(v). Specifically, the Examiner stated that under 37 C.F.R. § 41.37(c)(1)(v), no dependent claims should be included in the "Summary of Claimed Subject Matter" unless those dependent claims are (1) argued separately, and (2) include means-plus-function or step-plus-function recitations under 35 U.S.C. § 112, ¶ 6. Accordingly, Appellants have revised the "Summary of Claimed Subject Matter" section to remove all dependent claims, in accordance with the Examiner's instructions.

Therefore, without agreeing or disagreeing whether the stated defect in the Notice of Non-Compliance was in error, the concerns raised by the Examiner are respectively believed to have been addressed. Any fees associated with this Appeal Brief are identified in the accompanying TRANSMITTAL OF APPEAL BRIEF.

## V.  SUMMARY OF CLAIMED SUBJECT MATTER

The following is a concise explanation of the subject matter defined in at least each of the independent claims involved in the appeal, as required by 3 C.F.R. §41.37(c)(1)(v). The following explanation is not intended to be used to construe the claims, which are believed to speak for themselves.  Nor does Appellant intend the following explanation to modify or add any claim elements, or to constitute a disclaimer of any equivalents to which the claim would otherwise be entitled.  Nor is any reference to certain preferred embodiments herein intended to disclaim other possible embodiments.

The following summary of the presently claimed subject matter indicates certain portions of the specification (including the drawings) that provide examples of embodiments of elements of the claimed subject matter.  It is to be understood that other portions of the specification not cited herein may also provide examples of embodiments of elements of the claimed subject matter.  It is also to be understood that the indicated examples are merely examples, and the scope of the claimed subject matter includes alternative embodiments and equivalents thereof. References herein to the specification are thus intended to be exemplary and not limiting.

### A.     Claim 1

Independent claim 1 recites a computer implemented method of determining comparable performance measures for employees having differing task assignments, comprising:

storing employee task data in a database of a computing system, wherein said employee task data includes a number of tasks completed and an amount of time spent on at least one completed task (e.g., Figure 4, element 402; page 17, lines 14-18; and page 22, lines 1-17);

generating sets of task scores based on a selected model design of task assignments utilizing said employee task data (e.g., Figure 1, element 108; page 6, lines 13-15; and page 22, lines 1-3);

selecting a centralized composite design as said model design (e.g., Figure 1, element 102; page 6, lines 19-22; and page 14, lines 11-22);

performing a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores (e.g., Figure 1, elements 112 and 114;

page 6, lines 8-18; page 7, lines 4-10; page 8, lines 1-22; page 14, line 5-20; and page 17, lines 4-18 );

analyzing said productivity scores to determine productivity parameters, wherein analyzing said productivity scores comprises applying linear regression techniques to said productivity scores utilizing said computing system (e.g., Figure 1, element 118; page 6, lines 8-18; page 7, lines 11-17; page 8, lines 1-11; page 9, lines 1-15; page 10, lines 12-18; page 13. line 11 – page 14, line 3; and page 17, line 19 – page 18, line 8); and

applying said productivity parameters to employee task scores for said employees to obtain said performance measures for said employees (e.g., Figure 1, elements 120 and 126; page 6, lines 8-18; page 7, lines 11-17; page 10, lines 3-18; page 17, line 19 – page 18, line 8; page 19, lines 14-21; and page 20, lines 1-21).

**B.     Claim 22**

Independent claim 22 recites a computer implemented method of determining productivity parameters for evaluating employee performance for employees having differing task assignments, comprising:

storing employee task data in a database of a computing system, wherein said employee task data includes a number of tasks completed and an amount of time spent on at least one completed task (e.g., Figure 4, element 402; page 17, lines 14-18; and page 22, lines 1-17);

generating sets of task scores based on a selected model design of task assignments utilizing said employee task data (e.g., Figure 1, element 108; page 6, lines 13-15; and page 22, lines 1-3);

selecting a centralized composite design as said model design (e.g., page 6, lines 19-22; and page 14, lines 11-22);

performing a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores (e.g., Figure 1, elements 112 and 114; page 6, lines 8-18; page 7, lines 4-10; page 8, lines 1-22; page 14, line 5-20; and page 17, lines 4-18 ); and

applying linear regression techniques to said productivity scores utilizing the computing system to obtain said productivity parameters using an expression having a form

$$PS_t(F_{t1}, F_{t2}, ..., F_{tK}) = \alpha_t + \sum_{k=1}^{K} \beta_{tk} F_{tk} + \sum_{k=1}^{K} \sum_{k'=1}^{K} \gamma_{tkk'} F_{tk} F_{tk'} \, , \text{ where}$$

$F_{tk}$ is a measured value for a $k$ task of assignment $t$,

$PS_t$ is a productivity score for said assignment $t$ as a function of said measured values,

$F_{t1}, F_{t2}, \ldots F_{tK}$, and

$\alpha_t$, $\beta_{tk}$ and $\gamma_{tkK'}$ are said productivity parameters (e.g., Figure 1, elements 120 and 126; page 6, lines 8-18; page 7, lines 11-17; page 10, lines 3-18; page 17, line 19 – page 18, line 8; page 19, lines 14-21; and page 20, lines 1-21).

## C.    Claim 29

Independent claim 29 recites a computer-readable medium containing instructions for controlling a computer system to determine comparable performance measures for employees having differing task assignments, said instructions controlling said computer system to:

store employee task data, wherein said employee task data includes a number of tasks completed and an amount of time spent on at least one completed task (e.g., Figure 4, element 402; page 17, lines 14-18; and page 22, lines 1-17);

generate sets of task scores based on a selected model design of task assignments utilizing said employee task data, wherein said model design is a centralized composite design (e.g., Figure 1, element 108; page 6, lines 13-22; page 14, lines 11-22; and page 22, lines 1-3);

obtain a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores (e.g., Figure 1, elements 112 and 114; page 6, lines 8-18; page 7, lines 4-10; page 8, lines 1-22; page 14, line 5-20; and page 17, lines 4-18 );

apply linear regression techniques to said productivity scores to obtain said productivity parameters using an expression having a form

$$PS_t(F_{t1}, F_{t2}, ..., F_{tK}) = \alpha_t + \sum_{k=1}^{K} \beta_{tk} F_{tk} + \sum_{k=1}^{K} \sum_{k'=1}^{K} \gamma_{tkk'} F_{tk} F_{tk'} \, , \text{ where}$$

$F_{tk}$ is a measured value for a $k$ task of assignment $t$,

$PS_t$ is a productivity score for said assignment $t$ as a function of said measured values,

$F_{t1}, F_{t2}, \ldots F_{tK}$, and

$\alpha_t$, $\beta_{tk}$ and $\gamma_{tkK'}$ are said productivity parameters (e.g., Figure 1, elements 120 and 126; page 6, lines 8-18; page 7, lines 11-17; page 10, lines 3-18; page 17, line 19 – page 18, line 8; page 19, lines 14-21; and page 20, lines 1-21); and

apply said productivity parameters to employee task scores for said employees to obtain said performance measures for said employees (e.g., Figure 1, elements 120 and 126; page 6, lines 8-18; page 7, lines 11-17; page 10, lines 3-18; page 17, line 19 – page 18, line 8; page 19, lines 14-21; and page 20, lines 1-21).

**D.     Claim 33**

Independent claim 33 recites a computer implemented application on computer-readable medium, said application comprising instructions to compare employee performance for employees having differing task assignments, said application comparing employee performance by:

storing employee task data, wherein said employee task data includes a number of tasks completed and an amount of time spent on at least one completed task (e.g., Figure 4, element 402; page 17, lines 14-18; and page 22, lines 1-17);

generating sets of task scores based on a selected model design of task assignments utilizing said employee task data, wherein said model design is a centralized composite design (e.g., Figure 1, element 108; Figure 1, element 108; page 17, lines 14-18; and page 22, lines 1-17);

obtaining a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores (e.g., Figure 1, elements 112 and 114; page 6, lines 8-18; page 7, lines 4-10; page 8, lines 1-22; page 14, line 5-20; and page 17, lines 4-18 );

analyzing said productivity scores to determine productivity parameters (e.g., Figure 1, element 118; page 6, lines 8-18; page 7, lines 11-17; page 8, lines 1-11; page 9, lines 1-15; page 10, lines 12-18; page 13. line 11 – page 14, line 3; and page 17, line 19 – page 18, line 8);

applying said productivity parameters to employee task scores for said employees to obtain performance measures for said employees (e.g., Figure 1, elements 120 and 126; page 6, lines 8-18; page 7, lines 11-17; page 10, lines 3-18; page 17, line 19 – page 18, line 8; page 19, lines 14-21; and page 20, lines 1-21);

calculating statistical measures for said performance measures over a time period (e.g., Figure 2, element 206; page 7, lines 15-18; page 10, lines 3-11; page 20, lines 1-8; and page 21, lines 12-22); and

identifying employees having performance measures outside a range of said statistical measures (e.g., Figure 2, element 210; page 7, lines 18-21; page 10, lines 3-11; page 13, line 15 – page 14, line 3; and page 19, lines 4-21).

## CONCLUSION

In view of the analysis in the Appeal Brief filed on October 28, 2009, a reversal of the rejections of record is respectfully requested of this Honorable Board.

It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013, under Order No. 65632-0559, from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

Dated:  February 10, 2010                              Respectfully submitted,

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